

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

Notice is hereby given that the Council of the County of Kaua'i will hold a public hearing on Wednesday, December 2, 2015, at 1:30 p.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Lihu'e, on the following:

Bill No. 2604

A BILL FOR AN ORDINANCE TO ESTABLISH A NEW ARTICLE IN THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO BARKING DOG NUISANCE

The purpose of this Bill is to establish a new Article within Chapter 22, Kaua'i County Code 1987, as amended, related to barking dog nuisance.

This Bill establishes regulations for the keeping of any dog which continues to bark, bay, cry, or howl intermittently for thirty (30) minutes within a forty-five (45) minute period of time, or continuously or incessantly for a period of fifteen (15) minutes. The provisions require that two (2) separate complaints, along with subsequent logs, or a statement from an Enforcement Officer who witnessed the barking for the requisite time, be filed with the Animal Control Provider prior to issuance of a citation. Additionally, the responsible party/owner is afforded no less than ten (10) days after receiving a written warning/notice of the barking dog nuisance claim, or within the timeframe agreed to between the Animal Control Provider and the responsible party/owner, to abate or refute the barking nuisance. Enforcement of this Article is by the Animal Control Provider or duly authorized Enforcement Officer. Fines for violation of this Article are set at Thirty-Five Dollars (\$35.00) for a first offense, Seventy-Five Dollars (\$75.00) for a second offense, and no less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00) for a third or subsequent offense.

All interested persons who wish to present their comments may do so at the public hearing. Written testimony prior to the hearing would be appreciated. Written testimony can be submitted to the Office of the County Clerk, Council Services Division by mail, facsimile, or via E-mail to counciltestimony@kauai.gov. Copies of the proposed Bill are available at the Office of the County Clerk, Council Services Division.

(The Council Committee or Council may amend this Bill at its subsequent meetings. Meeting notices are posted at least 6 days in advance at the County Clerk's Office and the public may also testify at any of these meetings.)

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that the foregoing Bill No. 2604 was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on November 4, 2015, by the following vote:

AYES: Chock, Hooser, Kagawa, Kaneshiro, Kualii, Yukimura,
Rapozo

TOTAL - 7,

NOES: None

TOTAL - 0,

EXCUSED & NOT VOTING: None

TOTAL - 0,

RECUSED & NOT VOTING: None

TOTAL - 0.

Lihu'e, Hawai'i
November 5, 2015

/s/ Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

NOTE: SPECIAL ACCOMMODATIONS AND SIGN LANGUAGE INTERPRETER AND INTERPRETERS FOR NON-ENGLISH SPEAKING PERSONS ARE AVAILABLE UPON REQUEST FIVE (5) DAYS PRIOR TO THE MEETING DATE, TO THE COUNTY CLERK, 4396 RICE STREET, SUITE 209, LIHU'E, KAUAI, HAWAII, 96766. TELEPHONE NO. (808) 241-4188. FACSIMILE NO. (808) 241-6349.

(One publication - The Garden Island - November 10, 2015)

**A BILL FOR AN ORDINANCE
TO ESTABLISH A NEW ARTICLE IN THE KAUAI COUNTY CODE 1987,
AS AMENDED, RELATING TO BARKING DOG NUISANCE**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Chapter 22, Kauai County Code 1987, as amended, is hereby amended by establishing a new Article as follows:

“ARTICLE ____ BARKING DOG NUISANCE

Article ____	Barking Dog Nuisance
Sec. 22-____.1	Purpose
Sec. 22-____.2	Definitions
Sec. 22-____.3	Barking Dog Nuisance
Sec. 22-____.4	Affirmative Defense
Sec. 22-____.5	Violation-Penalties
Sec. 22-____.6	Enforcement and Liability
Sec. 22-____.7	Civil Action Not Precluded
Sec. 22-____.8	Severability

Sec. 22-____.1 Purpose.

The purpose of this Article shall be to preserve the public peace and good order in the county and to promote the public health, safety, and welfare of the residents of the county by regulating and restricting the barking of dogs in a fair manner, balancing the rights and privileges of dog owners with the rights and privileges of other citizens of the county.

Sec. 22-____.2 Definitions.

“Animal Control Provider” means the duly incorporated humane society or organization formed for the prevention of cruelty to animals which is contracted by the County to perform animal control services.

“Barking Dog” means any dog that barks, whines, howls, cries or makes any other noise as described in Section 22-____.3 of this Article.

“Citation” means a notice issued pursuant to this Article that there has been a violation of this article.

“County” means the County of Kauai.

“Day or days” as used in this Article shall mean calendar day or calendar days, respectively, unless otherwise expressly provided. The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.

“Enforcement Officer” means any person authorized and designated to enforce the provisions of this Article or the laws of the County of Kaua‘i.

“Responsible Party” means any person owning, harboring, or keeping a dog; provided that if the owner is a minor under the age of 18 years, the parents, guardian, or other person having the care, custody, or control of the minor shall be rebuttably presumed to be the owner. The person to whom a license was issued pursuant to HRS Section 143-2 shall be rebuttably presumed to be the owner of the dog for purposes of this section.

Sec. 22-____.3 Barking Dog Nuisance.

No person shall keep any dog(s) which barks, bays, cries, or howls intermittently for a period of thirty (30) minutes within a forty-five (45) minute period of time, or continuously or incessantly for a period of fifteen (15) minutes to the disturbance of two (2) different persons who have affirmed the nuisance in writing, and who reside at two (2) different addresses within the same real property tax map key (zone, section, and plat number) as the physical location of the dog causing the nuisance, at any time of day or night and regardless of whether the dog(s) is physically situated in or upon private property.

Sec. 22-____.4 Affirmative Defense.

A dog shall not be deemed a barking dog for purposes of this section if, at the time the dog is barking or making any other noise, a person is trespassing upon or traveling past private property in or upon which the dog is situated or for any other reasonable or apparent cause for the dog’s barking.

Sec. 22-____.5 Violation-Penalties.

Unsuccessful remediation of the nuisance barking following intervention by the Enforcement Officer may result in the issuance of a citation.

(a) There shall be a fine of Thirty-Five Dollars (\$35.00) for the first violation of this Article. As used in this section, “first violation” shall mean an offense that does not occur within ninety (90) days of the conviction for a previous offense involving the same provision.

(b) There shall be a fine of Seventy-Five Dollars (\$75.00) for the second violation of this Article if the offense occurred within ninety (90) days of the conviction for one (1) previous offense involving the same provision.

(c) There shall be a fine of not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00) for the third and any subsequent violation of this Article if the offense occurred within ninety (90) days of the conviction for two or more previous offenses involving the same provision.

(d) The Court may also require successful completion of a dog training class in addition to or in lieu of a fine.

(e) Payment of a fine shall not excuse the violator from correcting the barking dog violation. The issuance of a barking dog citation and/or payment of a fine shall not bar the Court from imposing appropriate remedial action to be undertaken by the responsible party, such as, but not limited to, successful completion of a dog behavioral course or the hiring of a dog trainer.

(f) Failure to comply with this Article shall be considered a violation, and not a misdemeanor or petty misdemeanor.

Sec. 22-____.6 Enforcement and Liability.

The provisions of this Article may be enforced by the Animal Control Provider or a duly authorized Enforcement Officer. It shall be a violation of this Article to interfere with the Animal Control Provider's representative or the Enforcement Officer in the performance of their duties. Prior to issuing a citation, two (2) separate nuisance claims shall have been made as provided in Section 22-____.3.

(a) Animal Control Provider. The Kaua'i Humane Society is hereby granted authority as the Animal Control Provider. It shall be the duty of the Animal Control Provider to receive, log, and compile barking dog nuisance claims.

(1) Upon receipt of a barking dog nuisance claim, a written warning/notice of nuisance claim and educational material shall be given to the responsible party, with a copy to the complainant. The notice shall give the responsible party no less two hundred forty (240) hours (or 10 days), or within the timeframe agreed to between the Animal Control Provider and the responsible party, to abate the barking nuisance or to refute the nuisance claim.

The educational material will consist of information on how to control a dog's barking and the process for the complainant to complete and submit a barking dog log.

Submission of a barking dog log does not lead to an automatic citation of the responsible party.

(2) The Animal Control Provider shall be in receipt of either of the following prior to issuing a citation and forwarding the citation to the Office of the Prosecuting Attorney:

(A) A statement from an Enforcement Officer who witnessed the dog barking for the requisite time period; or

(B) Two (2) separate complaints accompanied by two (2) completed logs.

(b) Office of the Prosecuting Attorney. Upon issuance, the citation will be forwarded to the Office of the Prosecuting Attorney for prosecution.

Sec. 22-____.7 Civil Action Not Precluded.

Nothing contained in this Article shall preclude any person injured by a dog from bringing a civil action against the owner of such dog pursuant to the applicable provisions of state law.

Sec. 22-____.8 Severability.

If any provision of this Article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provisions or applications, and to this end the provisions of this article are severable.”

SECTION 2. This ordinance shall take effect upon its approval.

Introduced by:

A handwritten signature in black ink, appearing to read "Kipukai Kualiti". The signature is fluid and cursive, with the first name "Kipukai" and the last name "Kualiti" clearly distinguishable.

KIPUKAI KUALITI

DATE OF INTRODUCTION:

November 4, 2015

Līhu‘e, Kaua‘i, Hawai‘i

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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2604, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on November 4, 2015, by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Kaneshiro, Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Līhu'e, Hawai'i
November 5, 2015



Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i